THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21358 of 1996

Dated 27-02-2007

Between:
M.Umapathi.

..... PETITIONER

AND

The Additional Deputy Inspector General of Police, Group Centre, C.R.P.F., Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.21358 of 1996

O R D E R:

The petitioner was dismissed from service on the ground that he had received illegal gratification and that a sum of Rs.11,450/- was recovered from his residence. With regards the charge of recovery of Rs.11,450/- from his residence, the charge was held not established.

The contention urged by Sri D.Linga Rao, learned counsel for the petitioner, with regards the charge of receiving illegal gratification, is that since the charge is grave and serious, a departmental enquiry ought to have been held, witnesses examined and the petitioner be given an opportunity of cross-examining such witnesses and adducing evidence in his defence. Learned counsel would further contend that the alleged admission said to have been made by the petitioner is not genuine and that his signatures were obtained prior to the contents having been entered in the letter. Learned counsel would place reliance on **Kuldeep Singh v. Commissioner of Police**[1] and **Radhey Shyam Gupta v. U.P.State Agro Industries Corporation Ltd**.[2].

A charge memo issued by the Disciplinary Authority and the reply/explanation offered by the delinquent in a departmental enquiry can be compared to a plaint and a written statement in a suit. A charge memo, and the reply/explanation thereto, in a departmental enquiry, are pleadings. (**K. Venkateswarlu Vs. Nagarjuna Grameena Bank**[3]). At an enquiry, facts have to be proved and the person proceeded against must have an opportunity to cross-

examine witnesses and to give his own version or explanation of the evidence on which he is charged and to lead his defence. If, however, the charged employee himself has, in answer to the charge levelled against him, admitted his guilt, there will be nothing more for the employer to enquire into. If the allegations are denied by the employee, the burden of proving the truth of those allegations will be on the employer and the witnesses examined by the employer, must be allowed to be cross-examined by the employee, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose in support of his plea. But if the employee admits his guilt to insist upon the employer to let in evidence about the allegations will only be an empty formality. In such a case it will be open to the employer to examine the employee himself, even in the first instance, so as to enable him to offer any explanation for his conduct or to place before the employer any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the employee, under such circumstances, should not savour of an inquisition. If, after examination of the employee, the employer chooses to examine any witnesses, the employee must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose. If admissions are taken as a whole with all its qualifications, and it is clear that the delinquent employee has admitted the facts necessary to establish the charge against him, it cannot be said that the enquiry was held in breach of the principles of natural justice. (**The Central Bank of India Vs. Karunamoy Banerjee**[4]).

Where the accusation is based on a matter of record, or the facts are admitted, it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and

which, if he cannot satisfactorily explain, must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and fairplay. If the second procedure leads to a just decision of the disputed points and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taken to it. It is, however, wise to ask the delinquent whether he would like to make a statement first or wait till the evidence is over but the failure to question him in this way does not ipso facto vitiate the enquiry unless prejudice is caused. It is only when the person enquired against is held at a disadvantage or has objected to such a course that the enquiry may be said to be vitiated. In all cases in which the facts in controversy are disputed the procedure ordinarily to be followed is that, before the delinquent is asked anything, all the evidence against him must be led. (**Employees of Firestone Vs. Workmen**[5]).

Giving of an opportunity of being heard or holding an enquiry is a check and balance concept that no one's right be taken away without giving him/her an opportunity of being heard in compliance with the rules of natural justice or where the statute so requires. But this procedure is not necessary in a case where the allegations and the charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations? In a case where the facts are admitted, the case reveals itself and is apparent on the face of the record, and in spite of an opportunity no worthwhile explanation is forthcoming, it would not be a fit case to interfere with the termination order.

(**Dharmarothmakara Raibahadur Arcot Ramaswsamy Mudaliar Educatinal Institution Vs. Educational Appellate Tribunal**[6])

Strict Rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would be permissible for the authorities to prove that the delinquent employee did make such a confession/admission and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. (**Kuldip Singh Vs. State of Punjab**[7]). A delinquent employee should not ordinarily, having regard to the scope and ambit of a domestic enquiry, be permitted to resile from his earlier stand. An admission by a party to the proceeding is binding on him. He, at a subsequent stage, should not be permitted to resile therefrom or explain away the same.

(**H. Kondal Reddy Vs. Central Bank of India, Hyderabad**[8]). Admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon. (**Delhi Transport Corporation Vs. Shyam Lal**[9])

If a delinquent is proved to have made an admission then it is his duty to explain the same and not that of the employer to ask him to do so. The effect of an admission is merely to shift the onus on the party making them unless a plea of estoppel can be successfully invoked. The evidentiary value of admissions depends upon the circumstances in which they are made and the possibility of incorrect statements being misguidedly made, by ignorant persons, should not be overlooked. If admissions are made with regard to the

legal consequences under misapprehension as to the true interpretation of law it is not binding upon a person.

(**K. Venkateswarlu**[3]).

In a disciplinary proceedings if the delinquent admits the charge framed against him or makes an unconditional and unqualified confession, then there is nothing more to be done by way of an enquiry and it cannot be argued that the procedure of a departmental enquiry should have been applied notwithstanding such admission or confession. When admission made by a delinquent shows that he had committed misconduct then the question of violation of principles of natural justice cannot have any relevance. If the employee admits his guilt in the enquiry, that is to say in his reply to the charge memo or before the enquiry officer, there is no obligation on the management to lead evidence on merits as that would be an empty formality. If an order made by the disciplinary authority, imposing punishment on a delinquent, could be sustained on the basis of the admission made by him, the punishment cannot be set aside by the Court on the ground that no witness was examined on behalf of the disciplinary authority. Examination of the witnesses on behalf of the disciplinary authority, in such facts situation, is unnecessary. Further, in case the delinquent admits the guilt unconditionally and clearly, and despite that the employer holds a departmental enquiry against him and the Court finds certain flaws or defects in such an unnecessary enquiry conducted by the employer, even then the Court cannot set aside the order made by the employer imposing punishment as, even if the defective enquiry is conducted, no prejudice is caused to the delinquent and action could have been taken against him merely on the basis of his admission. (**K.Venkateswarlu**[3]).

In **The Nagarjuna Grameena Bank v. M.P.Bruce**[10], a Division Bench of this Court observed:-

".....In the above said judgments, it has been laid down that the statement made by a delinquent officer would amount to admission of guilt only when the said statement is made voluntarily and in unequivocal terms. **The entire statement made by the delinquent officer must be considered in toto to come to the conclusion that such statement amounts to admission of guilt. In case, after regarding the entire statement, the only conclusion that could be reached is that the delinquent officer has accepted the guilt, then it has to be held that the delinquent officer has admitted the guilt in unequivocal terms and that no further enquiry is necessary and the enquiry officer can submit his report without conducting further enquiry. Otherwise, the enquiry officer has to conduct enquiry by examining the witnesses to prove the charge and shall give an opportunity to the delinquent officer to cross-examine the said witnesses and to lead his evidence and shall proceed further in accordance with law. But, where the enquiry officer, merely on the basis of a vague statement made, by the delinquent officer, or considering only a part of the statement, without taking the statement in toto into account, comes to the conclusion that the delinquent officer has admitted the guilt and on such a footing, proceeds, without conducting further enquiry, to make a report finding the delinquent officer guilty of the charges, it has to be held that such an enquiry is no enquiry in the eye of law as it is not a fair enquiry.....**

.....The delinquent officer-respondent herein had submitted an explanation to the charge-memo. He submitted his explanation with respect to all the charges. In the first part of the explanation, he disputed the veracity of the charges and stated the circumstances in which a particular thing or act happened. In the latter part of the explanation, he stated that in case the authority comes to the conclusion that the charges levelled against him are proved, he may be pardoned. Therefore, by reading the explanation as a whole it is not possible to conclude that the delinquent officer-respondent herein has admitted the guilt in clear and unequivocal terms....." (emphasis supplied)

Since the petitioner had, on more than one occasion, categorically and unequivocally admitted to the charge levelled against him, the mere fact that an enquiry was held, which is found to be defective, would be of no consequence and as, on the basis of such admission, the charges levelled against the delinquent employee must be held to have been established and such established acts of misconduct justifies imposition of punishment of dismissal from service, no interference is called for in proceedings under Article 226 of the Constitution of India.

In the present case, since it is contended by Sri D.Linga Rao, learned counsel for the petitioner, that the petitioner's signature had been obtained on a blank sheet and the contents of the said letter were filled in thereafter, I directed the respondents to produce the records. On verification of the records, it is found that the petitioner had admitted his guilt on more than one occasion. There is no force in the contention that the petitioner's signature had been obtained on a blank sheet and that the contents of the said letter were entered later.

In **Kuldeep Singh**[1], Rule 16(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 permitted statements of witnesses to be brought on record without producing such witnesses in the departmental enquiry. The Supreme Court held that the said rule could be invoked only when the presence of a witness could not be procured without undue delay and not otherwise. The Supreme Court further held that non-production of the witnesses, which was the fault of the department and had resulted in a finding of guilt being recorded against the delinquent employee, was arbitrary.

The said judgment has no application to the facts of the present case. In the case on hand, since the petitioner had admitted his guilt categorically and unequivocally on more than one occasion, it was wholly unnecessary for the enquiry officer to summon witnesses and to examine them in the departmental enquiry, since the punishment could be imposed solely on the basis of the admission made by the petitioner.

Radhey Shyam Gupta[2], was a case of termination of the services of a probationer. An *ex parte* enquiry held behind the back of the petitioner was aborted before the stage of recording of evidence and an order of termination simpliciter was passed. The

Supreme Court examined various aspects to determine whether in such cases termination of service was punitive or not.

The said judgment also has no application to the facts of the present case. In view of the categorical admission of guilt by the petitioner, imposition of the punishment of dismissal from service on a constable in the Central Reserve Police Force, cannot be said to be arbitrary or illegal. In any event, it is not for this Court to interfere with the quantum of punishment, unless the punishment is one which shocks the conscience of the Court or is one which could not be imposed at all. In the facts of the present case, it cannot be said that the punishment imposed is one such.

The Writ Petition fails and is accordingly dismissed. No costs.

_____

27-02-2007

usd

---

[1] 1999(2) SCC 10

[2] 1999(2) SCC 21

[3] 1995(1) ALD 500

[4] AIR 1968 SC 266

[5] AIR 1968 SC 236

[6] 1999(7) SCC 332

[7] 1996(10) SCC 659

[8] 2002(1) ALD 280(FB)

[9] 2004 (8) SCC 88

[10] 1995(3) ALD 786